

FCC MAIL SECTION

Federal Communications Commission

DA 99-416

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Before the
Federal Communications Commission
DISPATCHED BY Washington, D.C. 20554

In the Matter of

Amendment of Section 73.606(b),
Table of Allotments,
TV Broadcast Stations.
(Kansas City, Missouri)

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)
)
) MM Docket No. 96-134
) RM-8817
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REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 24, 1999

Released: February 26, 1999

By the Chief, Allocations Branch:

1. The Commission has before it the Notice Of Proposed Rule Making in this proceeding, 11 FCC Rcd 16254 (1996). KCWB-TV, Inc. (formerly TV-32, Inc.) and Miller Broadcasting, Inc. ("Miller Broadcasting") filed Comments. WDAF License, Inc. ("WDAF") and KCWB-TV, Inc. ("KCWB") filed Reply Comments. For the reasons discussed below, we are substituting Channel 29 for Channel 32 at Kansas City, Missouri, and are modifying the construction permit of Station KCWB-TV to specify operation on Channel 29.

Background

2. At the request of KCWB, permittee of television Station KCWB-TV, Channel 32, Kansas City, Missouri, the Notice proposed the substitution of Channel 29 for Channel 32 at Kansas City and modification of the Station KCWB construction permit to specify operation on Channel 29. In order to accommodate Channel 29 at Kansas City, KCWB also proposed a change in the coordinates of vacant Channel *22 at St. Joseph, Missouri. In its Petition for Rule Making, KCWB stated that it is requesting the channel substitution because it could not obtain a permit from the local zoning authority to construct a tower at the proposed transmitter site because of opposition from neighboring property owners. KCWB also stated that due to Federal Aviation Administration air-hazard limitations, it could not construct a tower at any alternate site and still comply with the Commission's minimum separation requirements. In a similar vein, all existing towers that could accommodate Channel 32 are short-spaced to Station KBIN-TV, Channel 32, Council Bluffs, Iowa, and to the Channel 18 allotment at Carrollton, Missouri. In order to initiate service, KCWB proposed the channel substitution and the modification of its construction permit. This would permit Station KCWB-TV to operate on a tower at an antenna farm with both FAA and local zoning authority approval.

3. In response to the Notice, Miller Broadcasting, licensee of Station KMCI, Channel 38, Lawrence, Kansas, filed Comments. In its Comments, Miller Broadcasting noted that Channel 29 was under consideration as its DTV channel in Lawrence. As such, Miller Broadcasting urged that no action be taken in this proceeding that would prejudice the availability of Channel 29 in Lawrence. In its Reply Comments, WDAF, licensee of Station WDAF-TV, Channel 4, Kansas City, Missouri, noted that Channel

29 had been proposed as its DTV channel in the Sixth Further Notice of Proposed Rule Making in MM Docket No 87-268, 11 FCC Rcd 10968 (1996). Therefore, WDAF stated that the substitution of Channel 29 in Kansas City for Station KCWB would be in conflict with the proposed Channel 29 DTV allotment for Station WDAF-TV set forth in the Sixth Further Notice of Proposed Rule Making, supra.

4. The Sixth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 14588 (1997), allotted Channel 34 as the DTV channel for Station WDAF-TV in Kansas City, and Channel 39 as the DTV channel for Station KMCI in Lawrence.¹ Neither of these channels conflict with the proposed Channel 29 substitution for Station KCWB in Kansas City. In view of these actions in the Sixth Report and Order, it is no longer necessary to consider the Miller Broadcasting Comments and the WDAF Reply Comments in this proceeding.

5. Based on the record in this proceeding, we believe that the public interest will be served by substituting Channel 29 for Channel 32 at Kansas City, Missouri.² This will permit the initiation of a new television service in Kansas City. Channel 29 can be allotted to Kansas City in compliance with the Commission's minimum separation requirements with respect to other NTSC allotments.³ We have also determined that the NTSC Channel 29 allotment will not increase the amount of predicted interference to any DTV allotment in the DTV Table of Allotments. For these reasons, we will modify the Station KCWB-TV construction permit to specify operation on Channel 29.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 19, 1999, the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, IS AMENDED for the community listed below to read as follows:

<u>Community</u>	<u>Channel No.</u>
Kansas City, Missouri	4, 5+, 9+, *19+, 29-, 41-, 50-, 62+, *68-

7. IT IS FURTHER ORDERED, That pursuant to section 316(a) of the Communications Act of 1934, as amended, the construction permit of KCWB-TV, Inc. for Station KCWB-TV, Kansas City, Missouri, IS MODIFIED to specify operation on Channel 29 in lieu of Channel 32, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in the station KCWB-TV construction permit (File No. BPCT-861216K4) except for the channel as

¹In the subsequent Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in MM Docket No. 87-268, 13 FCC Rcd 7418 (1998), and the Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders in MM Docket No. 87-268, FCC 98-315, released December 18, 1998, DTV Channel 36 was allotted to Lawrence in lieu of Channel 39.

²The coordinates for the NTSC Channel 29 allotment at Kansas City, Missouri, are 39-05-01 and 94-30-57.

³In the Sixth Report and Order, supra, at 14639, the Commission determined that vacant NTSC allotments will be considered as deleted. For this reason, the vacant Channel *22 allotment at St. Joseph, Missouri, will not be considered as an impediment to a Channel 29 allotment at Kansas City, Missouri.

specified above. Any other changes, except for those so specified under Section 73.1620 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with construction permit BPCT-861216K4, except for the channel as specified above, and a license application (FCC Form 302) is filed within 10 days of the commencement of program tests.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass media Bureau